

DECISION



THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D.C. 20548

FILE: B-220199.2

DATE: November 8, 1985

MATTER OF: Action Porta Systems

DIGEST:

Where a protester does not allege the existence of limited circumstances under which the protester's failure to acknowledge a solicitation amendment incorporating minimum wage determinations under the Service Contract Act may be corrected, the protester's bid must be viewed as having been properly rejected since such a failure generally renders the bid nonresponsive.

Action Porta Systems protests the rejection of its bid as nonresponsive under invitation for bids (IFB) No. DABT35-85-B-0119, issued by the Department of the Army. We dismiss the protest.

The Army rejected the bid because Action failed to acknowledge one of two amendments to the IFB. Action states that it never received the subject amendment, which incorporated wage rate determinations under the Service Contract Act, 41 U.S.C. §§ 351-358 (1982). Action also states that a contracting official advised it to submit a late acknowledgment with a letter of explanation, which it did. The protester argues that the amendment would have had no effect on its bid price and asserts that accepting its bid would save the government money.

A bidder bears the risk of nonreceipt of a solicitation amendment, and the fact that a bidder may not have received an amendment is not relevant unless that failure resulted from a conscious or deliberate attempt by contracting officials to exclude the bidder from the competition. Southeast Engineering, B-215855, Sept. 11, 1984, 84-2 CPD ¶ 283. Action has not alleged that this was the reason for its nonreceipt of the amendment. Moreover, the failure to acknowledge an amendment adding a wage rate

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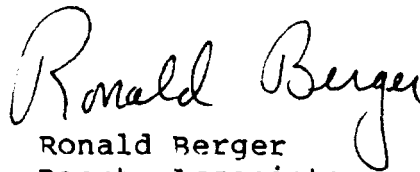
determination to a solicitation generally renders a bid nonresponsive, because without the acknowledgment, the bid does not legally obligate the bidder to pay the wages prescribed by the amendment. TCA Reservations, Inc., B-218615, Aug. 13, 1985, 85-2 CPD ¶ 163.

We have recognized, however, that the failure to acknowledge a wage rate amendment may be corrected after bid opening under very limited circumstances. See U.S. Department of the Interior--Request for Advance Decision, et al., 64 Comp. Gen. 189 (1985), 85-1 CPD ¶ 34 (where the amendment revised a wage rate for one labor category and had a de minimis effect on price, amounting to only a 0.013 percent increase in the original bid price); Brutoco Engineering & Construction, Inc., 62 Comp. Gen. 111 (1983), 83-1 CPD ¶ 9 (where the effect on bid price was de minimis, only 0.8 percent, and the bidder was otherwise obligated under a collective bargaining agreement to pay wages exceeding the revised wage rate). But see Grade-Way Construction v. U.S., 7 Cl. Ct. 263 (1985). The protester does not allege that any of these circumstances exists here.

While the protester does contend that it already pays its workers more than the minimum wage, it provides no evidence to support its contention, nor does it allege that its intention to comply with the IFB's requirements, as amended, is manifest from the bid itself. See TCA Reservations, Inc., B-218615, supra.

Action's alleged reliance on the instruction of a contracting official to acknowledge the wage rate amendment after bid opening does not change the result here. Erroneous advice given by an agency official cannot estop the government from rejecting a nonresponsive bid, since the agency is required to do so by law. Reliable Service Technology, B-217152, Feb. 25, 1985, 85-1 CPD ¶ 234.

The protest is dismissed.


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